

ASSEMBLY BILL

No. 1637

Introduced by Assembly Member La Suer

February 21, 2003

An act to amend Section 42400.4 of, and to repeal Section 42410 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1637, as introduced, La Suer. Air pollution: penalties

Existing law authorizes the state board to impose administrative penalties as an alternative to seeking civil penalties for the violation of certain state board regulations relating to vehicular and nonvehicular air pollution control. Existing law also limits the state board's authority to impose an administrative penalty to a maximum of \$10,000 per day in which there is a violation not to exceed \$100,000 per penalty assessment proceeding for any violation arising from the same conduct. Existing law also provides for administrative review under existing state board administrative hearing procedure regulations, except that hearings are conducted by an administrative law judge appointed by the Office of Administrative Hearings. Existing law also provides for judicial review of an administrative hearing.

This bill would delete these alternative administrative penalty provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 42400.4 of the Health and Safety Code is amended to read:

42400.4. (a) In any district where a Title V permit program has been fully approved by the ~~federal~~ Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(b) In any district in which a Title V permit program has been fully approved by the ~~federal~~ Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(c) The recovery of civil penalties pursuant to Section 42402, ~~42402.1~~ 40402.1, 42402.2, or ~~42402.3~~ 40402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the ~~federal~~ Environmental Protection Agency fully approves that district's Title V permit program.

(f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 2. Section 42410 of the Health and Safety Code is repealed.

~~42410. (a) As an alternative to seeking civil penalties under Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 for a violation of regulations of the state board, the state board may impose an administrative penalty, as specified in this section. Any~~

~~administrative penalty imposed under this section shall be imposed as an alternative to, and not in addition to, a civil penalty imposed pursuant to this article. No administrative penalty imposed by the state board pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.~~

~~(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars (\$10,000) for each day in which there is a violation of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.~~

~~(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.~~

~~(d) Nothing in this section authorizes the state board to seek penalties for categories of violations for which the state board may not recover penalties in a civil action.~~

~~(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.~~

~~(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 42403.~~

~~(g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (e), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state~~

~~board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.~~

~~(h) For any violation that is within the enforcement jurisdiction of both the state board and the districts, the state board may impose an administrative penalty pursuant to this section only if the district in which the violation has occurred has not commenced an enforcement action for that violation.~~

~~(i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.~~

~~(j) Any administrative penalty assessed pursuant to this section shall be paid to the State Treasurer for deposit in the General Fund.~~

~~(k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.~~

~~(l) This section shall only apply to violations that occur on or after January 1, 2002.~~

~~(m) On or before January 30, 2005, the state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar years 2002, 2003, 2004, and 2005.~~